

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of
the Family Child Care License of
Janalynn Hartmann

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on January 19, 2012, at the Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Frederic S. Stephens, Assistant County Attorney, Hennepin County Attorney's Office, Health Services Building, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415-0972, appeared for Hennepin County Human Services (County) and the Minnesota Department of Human Services (Department). Janalynn Hartmann (Licensee) appeared on her own behalf without counsel.

STATEMENT OF ISSUE

Should the family child care license of Janalynn Hartmann be revoked based on her serious and chronic violation of licensing rules and the terms of a conditional license?

The Administrative Law Judge concludes that the license should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Janalynn Hartmann has been a licensed provider of family child care since 1990. She lives in Brooklyn Park with her husband, who was a volunteer firefighter for 30 years and a fire inspector for 15 years. She currently has a C2 license, which means she can care for 12 children, ten of whom can be under school age.¹

2. During licensing renewal visits in 1991-1993, 1996-2002, 2004, 2006-2007, and 2009, Hartmann received correction orders for a variety of violations, including missing pet vaccination records and other required forms,

¹ Testimony of Janalynn Hartmann; Testimony of Albert Hartmann.

storing combustible items too close to a furnace, storing toxic or hazardous items within reach of children, failure to make certain rooms inaccessible, failure to comply with training requirements, and failure to service the fire extinguisher.² In addition, a correction order was issued in 1991 requiring a padlock on a gate leading to an above-ground pool; in 1999 the pool policy was interpreted to require a fence around the pool, and the provider was required to install a fence. Despite the frequency of these corrective orders, the County took no action to suspend, revoke, or make the daycare license conditional based on these violations.

2. In 2009, Hartmann's adult son separated from his wife and began living in the Licensee's home with his nine-year-old son on the two days per week that he had physical custody of the boy; on the other days of the week, the adult son returned to his home in a different city, while the boy remained with his mother in Brooklyn Park. The grandson attended school across the street from the Licensee's home, and the Licensee provided care for him in the mornings before school and during the afternoons after school when he was not with his mother.³

3. The Licensee's grandson engaged in some sexual play with a five-year-old daycare child on two occasions in 2009. He straddled the girl (while both were fully clothed), made a thrusting motion, and announced that "we're having sex." Child protection authorities conducted an investigation and determined there was no maltreatment because the Licensee was adequately supervising the children; licensing authorities, however, cited her for inadequate supervision, failure to submit a background study request for her adult son as a household member, failure to report new household members, and failure to report suspected abuse.⁴

4. Based on these violations, Hennepin County licensing authorities recommended that the Department take negative action against Ms. Hartmann's license in the form of a conditional license. The Commissioner, however, determined that revocation of the license was appropriate. The Licensee appealed, and after a contested case hearing, the Administrative Law Judge recommended that a conditional license be imposed in lieu of revocation. The Commissioner adopted this recommendation and ordered the following conditions, in relevant part :

- The Licensee must follow and comply with all applicable Minnesota Rules and Laws.
- No variances to age distribution or capacity will be granted during the conditional period.

² Ex. 38.

³ Testimony of Janalynn Hartmann.

⁴ Ex. 38.

- Licensee must complete six additional hours of training, in addition to the required annual training, in the areas of supervision, licensing rule review, and sexual abuse of children.

- Licensee will be subject to unannounced monthly visits by Hennepin County Human Services to ensure compliance with conditions.

- Licensee will provide direct supervision of her grandson whenever the grandson is present in the home during child care hours, and will provide a written plan to Hennepin County Human Services by January 3, 2011, on how she plans to implement this condition. Further, the grandson will never be left alone with other children in care and Licensee will follow any recommendation from the grandson's treating therapist regarding additional measures to ensure the safety of children in her care.⁵

5. After the incidents of sexual play came to light, the grandson's parents immediately began taking the boy to therapy, to which he responded well. The parents of the girl involved in the sex play were supportive of the grandson and comfortable with the Licensee's supervision of him and their daughter.⁶

6. The drafting of the supervision plan referenced in the Order of Conditional Licensure proved to be somewhat problematic. The rule applicable to infants, toddlers, and preschoolers defines supervision as a caregiver being "within sight *or* hearing" so that the caregiver is capable of intervening to protect the health and safety of the child.⁷ The term "direct supervision" is not a defined term in the statutes or rules applicable to family child care, and the Licensee had a different idea than did the Department as to what "direct supervision" should mean. She believed it should be appropriate for the grandson to be supervised by his father or grandfather in areas away from the daycare children, or to be in his room by himself, while the County insisted that she as the Licensee was to be the only person responsible for supervising the grandson during daycare hours and that he was to be within her sight and hearing at all times. After the exchange of several drafts of a supervision plan, the Licensee and the County eventually agreed on the wording of a plan that called for the Licensee to be within sight *and* hearing of her grandson at all times during daycare hours.⁸

⁵ Ex. 6.

⁶ Ex. 5.

⁷ Minn. R. 9502.0315, subp. 29a (2011). All citations to Minnesota Rules are to the 2011 edition.

⁸ The plan is Ex. 15. The correspondence regarding the drafting of the plan is contained in Exhibits 8 through 12 and 14.

7. The Licensee was not being obstructive or uncooperative in attempting to understand what “direct supervision” of her grandson would involve. After she signed the agreement, she supervised the grandson as required. There is no claim in this case that the Licensee failed to comply with the supervision agreement or failed to adequately supervise her grandson.

8. Instead, the monthly unannounced visits by the County generated monthly correction orders of the type the Licensee had regularly received in the past. Because her license was conditioned on compliance with all licensing rules, however, the County deemed the violations to be more important than they had been during past licensing renewal visits.⁹ The Licensee did not seek reconsideration of any of the citations because she assumed she had to do whatever the correction orders required of her.¹⁰

9. The Licensee’s home is of split-level construction. The daycare playroom is in the lower level to the left of the stairs; to the right of the stairs are other rooms including a bedroom, furnace room, and laundry room. The Licensee has always had a gate in place between the stairs and the entrance to the playroom to prevent children from leaving the play area; however, she sometimes left open the door to the furnace room, where a litter box was kept for the cat.¹¹ The Licensee has a video camera in the playroom that captures the main play area and displays on a television kept in the kitchen. She used baby monitors (for sound) in bedrooms where children slept; the receiver units were kept in the basement play area and near the patio door.¹²

10. During the licensor’s visit on January 13, 2011, the door to the furnace room was open, although the gate to the playroom was in use. The licensor cited her for failing to keep the furnace room inaccessible to children.¹³ In addition, a seven-month-old who was not yet crawling was in the living room while the Licensee prepared food in the kitchen, and there was no gate on the stairs between the living room and the entryway. The licensor cited her for failure to have a gate in place on this stairway.¹⁴ When the Licensee brought all the children up for lunch, she placed a toddler in a high chair and did not immediately fasten the safety strap, although she did fasten the strap within three to four minutes, without prompting by the licensor. He cited her for violating Minn. R. 9502.0415, subp. 3, which requires providers to have a working high chair for each infant in care.¹⁵

⁹ Testimony of Tim Hennessey.

¹⁰ Test. of J. Hartmann.

¹¹ Test. of J. Hartmann.

¹² *Id.*

¹³ Minn. R. 9502.0425, subp. 7 E, provides that the furnace, hot water heater, and workshop area of a home must be inaccessible to children. Separation may be by a door, partition, or gate.

¹⁴ Minn. R. 9502.0425, subp. 10 C, provides that gates or barriers must be used when children between the ages of six and 18 months are in care.

¹⁵ The correction order is Ex. 13; the licensor’s notes regarding this visit are at Ex. 7, pp. 1-2.

11. In a visit on February 14, 2011, the licensor found that Hartmann had in fact purchased a second gate to use between the playroom stairs and the bedroom/furnace room/laundry room area, but the gate was not in use at the time of the visit. Hartmann had taken it down when she went into the bedroom earlier that morning and had not replaced it before the licensor arrived. The door to the laundry room was open. The licensor inspected the kitchen drawers and found pliers, wire cutters, and a meat fork in the silverware drawer; plant food and dishwasher soap under the sink; and cat food in a dish on the kitchen floor. He also found an uncovered trash can under the kitchen sink. The licensor issued a correction order for violations of Minn. R. 9502.0425, subp. 7 E; 9502.0435, subps. 4 & 6; and 9502.0435, subp. 3.¹⁶ He also warned her that she was not in compliance with the conditional license and that she should bring her home into compliance immediately.¹⁷

12. In a visit on March 22, 2011, the licensor visited and noticed no violations during the visit. After he left the home, he recalled seeing a fish tank on the kitchen counter containing a turtle. He called the Licensee from his car to advise her that turtles were not allowed on the premises of daycare homes and issued a correction order for violation of Minn. R. 9502.0435, subp. 12.¹⁸ Upon receiving the correction order, the Licensee called the licensor to ask if the turtle could be kept in the laundry room until ponds thawed and the turtle could be released. The licensor indicated that “relocating the turtle to an unlicensed area of the home was not an option.”¹⁹ The Licensee responded to the correction order by indicating that the turtle had been moved to the garage while they waited for the ponds to thaw.²⁰

13. The licensing rule regarding pets provides that “[a]ll pets housed within the residence shall be maintained in good health and limited to dogs, cats, fish, guinea pigs, gerbils, rabbits, hamsters, rats, mice, and birds if the birds are clear of chlamydia psittaci.”²¹ Upon receiving the Licensee’s response to the correction order, the licensor wrote to her that the turtle could not remain in the garage either; that she had failed to correct the violation; and that further violations of licensing rules would result in consultation with the legal team.²² He also cited her for failure to comply with the correction order requiring removal of

¹⁶ Ex. 16. Minn. R. 9502.0435, subps. 4 and 6, require that all detergents and other toxic substances must be inaccessible to children and that knives and other potential hazards be kept out of reach of infants, toddlers, and preschoolers. Minn. R. 9502.0435, subp. 3, requires that indoor garbage containers must not be accessible to infants and toddlers.

¹⁷ Ex. 17.

¹⁸ Ex. 18.

¹⁹ Ex. 7 at p. 3.

²⁰ *Id.*

²¹ Minn. R. 9502.0435, subp. 12.

²² Ex. 19.

the turtle.²³ The Licensee responded to the correction order by destroying the turtle.²⁴

14. At this point, the Licensee and her husband became quite concerned about her future as a daycare provider. The husband requested a meeting with the licensor and his supervisor to discuss their concerns. The licensor declined to meet with the husband but indicated the Licensee could request a meeting with the supervisor. He reiterated that she had demonstrated a pattern of licensing violations, had not requested reconsideration of any of them, and was required to be in compliance with all rules and statutes.²⁵

15. In a visit on April 19, 2011, the licensor visited the home with the regular licensing worker. They found that an eleven-month-old was sleeping in a crib with bumper pads, and a toy (a musical lamb) was in the crib as well as a cloth diaper. They found light bulbs and dish detergent in a cabinet under the kitchen sink that was not secured with any type of childproof latch. They found foil wrap and screwdrivers in an unsecured kitchen drawer. They found air freshener, bath products, and lip balm in a cabinet under the vanity sink in a bathroom; the cabinet was secured with a childproof “tot lock” latch, but the licensors advised the Licensee that they no longer found this type of latch acceptable and would require the use of a magnet lock instead. They also found two screwdrivers on a shelf about five feet high in the basement play area, and the Licensor did not immediately turn on the receiver unit for the baby monitor when they went down to the play area. In addition, they learned that the Licensee had not completed required training in cardiopulmonary resuscitation (CPR) by September 2009, the date her previous training had expired. A correction order was issued for failing to ensure that toxic and hazardous items were not accessible to children in the kitchen, bathroom, and basement; for violation of the SIDS protocol by using bumper pads and allowing a toy in the crib; for lack of supervision, alleging no monitor was in place when the infant was sleeping upstairs and the provider was in the lower level; and lapsed CPR training.²⁶ In a cover letter to the Licensee, the licensor indicated that “monitors, when in use, should be powered on before a child is placed to sleep, not after.”²⁷

16. The licensing rules do not require the use of a specific type of childproof latch; they merely require that cabinets where toxic or potentially hazardous items are stored must be inaccessible to children.²⁸ Although the County previously considered the use of plastic cabinet latches an appropriate method of securing cabinets, it now interprets the rule to require the use of

²³ Ex. 20.

²⁴ *Id.*

²⁵ Ex. 21. Minn. Stat. § 245A.1435(b), precludes the use of pillows, pillow-like stuffed toys, or soft products in a crib with an infant (up to age 12 months); Minn. Stat. § 245A.50, subd. 4(b), requires that providers have CPR training every three years.

²⁶ Ex. 22; Ex. 7 at 4; Test. of T. Hennessey; Test. of J. Hartmann.

²⁷ Ex. 23.

²⁸ Minn. R. 9502.0435, subps. 4 & 6.

magnet locks.²⁹ Nor do the licensing rules require the use of a baby monitor; the rule provides, as noted above, that the provider must be within sight or hearing of an infant.³⁰ The licensor did not know whether the infant could be heard upstairs without use of the monitor. In addition, the County considers objects stored at five feet or higher to be inaccessible to children, although the rule does not contain a specific height requirement.³¹

17. On April 20, 2011, the Licensee called the licensor to inquire whether some exception could be made to allow the 11-month-old (who would turn one year old in two weeks and would no longer be considered an infant) to sleep with the cloth diaper he found to be comforting. The licensor considered this conversation to be further evidence of the Licensee's unwillingness to follow licensing rules.³²

18. On April 29, 2011, the County recommended that the Commissioner revoke the Licensee's family child care license based on violations documented during the period of conditional licensure.³³

19. On May 5, 2011, the Licensee called the licensor's supervisor with concerns about the number and validity of some of the correction orders issued to her. She requested that a different licensing person visit her home. The supervisor indicated that she would not assign a different person to monitor the conditional license.³⁴ From that point forward, two licensors made visits to the Licensee's home together.

20. On May 18, 2011, the licensors conducted an unannounced visit. The Licensee had installed magnetic locks on some of the cabinets and drawers in the kitchen. There was a single battery on the kitchen counter, and cat food was in a dish on the floor. A container of deodorant was on the sofa in the living room. In the back yard, the gate to the pool area was wired shut but no padlock was in place. A correction order was issued for failure to ensure the battery, deodorant, and cat food were inaccessible to children, and for failing to ensure the pool was inaccessible to children because no padlock was in place.³⁵

21. On the weekend of June 11-12, 2011, the water heater in the Licensee's basement leaked and flooded the lower level of the home. All carpeting and furniture had to be removed from the lower level, and the daycare was closed on June 13, 2011. During an unannounced visit on June 14, 2011, all the children in care, including a 13-month-old, were on the main living level of

²⁹ Test. of T. Hennessey.

³⁰ Minn. R. 9502.0315, subp. 29a.

³¹ Test. of T. Hennessey.

³² Ex. 7 at p. 5.

³³ Ex. 24; Test. of T. Hennessey.

³⁴ Ex. 25 at 5.

³⁵ Ex. 26; Ex. 25 at p. 6; Test. of J. Hartmann. Minn. R. 9502.0425, subp. 3, requires that swimming pools must be inaccessible to children except during periods of supervised use.

the home. There was a gate at the top of the stairs, but it was not in place. The Licensee's husband had been going up and down the stairs while helping workers from Gertsen Co. clear out the lower level. No other violations were noted on the main level of the home. In the backyard, the licensors noticed that there were padlocks on the gate to the pool area, but the padlocks were open. The Licensee explained that workers had been moving items from the basement into a storage area through that gate.³⁶ The licensor issued a correction order citing the Licensee for failure to have a gate in place at the top of the stairway and for failing to ensure that an above-ground pool was inaccessible to children.³⁷

22. During a visit on July 18, 2011, the Licensee was in the lower level with all the children, including her grandson, when the licensors arrived. The grandson's stepmother was also present. No violations were found in the lower level. The licensors went upstairs to inspect the kitchen, and the Licensee followed them up to ask a question about renewal paperwork. In the kitchen, the Licensee had installed a magnetic lock on a kitchen drawer, but it was not activated. The visit took place on a Monday morning, and the Licensee had forgotten to activate this lock before children arrived. A screwdriver and screws were in the drawer. The licensor issued a correction order for failing to ensure that hazardous items were inaccessible to children.³⁸ He also advised her that for the five-minute period she spoke to them upstairs, she had been in violation of the supervision plan regarding her grandson. He did not, however, cite her for failing to comply with the plan as he believed this was an accidental oversight.³⁹

23. On August 17, 2011, the licensors arrived for an unannounced visit. The children were in the lower level, and the Licensee had been making lunch in the kitchen. Her grandson was not present. She did have 13 children in care: three toddlers, five preschoolers, and five school-age children. The C2 license permits 12 children, only two of whom can be infants or toddlers. A friend had called at the last minute, and the Licensee had agreed to watch the extra toddler for three hours as a favor. The Licensee could hear the children from the kitchen, and she could see them on the television through use of the video camera. The licensor issued a correction order citing the Licensee for being over capacity and out of ratio, and for failing to adequately supervise children in care while she was upstairs in the kitchen.⁴⁰ The licensor believed that the Licensee should have brought the youngest children upstairs with her since she was overcapacity that day, in order to supervise them properly.⁴¹

³⁶ Ex. 25 at p. 7; Test. of J. Hartmann.

³⁷ Ex. 28.

³⁸ Ex. 30.

³⁹ Ex. 31.

⁴⁰ Ex. 32.

⁴¹ Test. of T. Hennessey; Ex. 33; Ex. 25 at p. 8.

24. At an unannounced relicensing visit on September 6, 2011, the regular licensing worker reviewed the paperwork for children in care and found that some dental information and other paperwork was missing, emergency back-up telephone numbers were not posted, an unlocking device for the lower level bathroom was missing. There was a tension-type gate at the top of the stairs in the living room, but the licensing worker believed it was insufficient to keep children from pushing it over. In addition, the hot water temperature in the home exceeded 120 degrees Fahrenheit (it was recorded at 125 degrees). The licenser issued a correction order for the missing paperwork, the failure to post emergency back-up telephone numbers, the missing unlocking device, the inadequate gate, and failure to maintain the water temperature at 120 degrees or less.⁴²

25. On October 18, 2011, the Commissioner issued an Order of Revocation providing as follows:

Due to the serious and chronic nature of [licensing violations between January 2011 and August 2011]; because you have repeatedly failed to comply with licensing requirements while your license was on conditional status; because you failed to follow SIDS reduction protocol when placing infants to sleep; because you repeatedly failed to provide adequate supervision to children in your care; because you failed to operate within your licensed capacity; because you repeatedly failed to keep hazardous materials and toxic substances inaccessible to children; because you have had repeated health and safety violations; because you failed to comply with a previously issued correction order; and in order to protect the health, safety, and rights of children receiving services in DHS-licensed programs, your license to provide family child care is revoked.⁴³

26. The Licensee filed a timely appeal of the Order of Revocation on October 26, 2011.⁴⁴

⁴² Ex. 37. Minn. R. 9502.0405, subp. 4 A (4), requires providers to maintain up-to-date information for each child as to the name, address, and telephone number of the physician, dentist, and hospital to be used for emergencies when parents cannot be reached; Minn. Stat. § 245A.146, subd. 3, requires providers to document annually that cribs in use have been checked against recall lists maintained by the US Consumer Product Safety Commission; Minn. Stat. § 144.414, subd. 2, requires day care providers to post a written notice if they permit smoking on the premises outside of daycare hours; Minn. R. 9502.0405, subp. 3, requires providers to have written plans for a helper and substitute for emergencies, vacations, or holidays available for discussion with the agency; Minn. R. 9502.0425, subp. 12 B requires that every bathroom door lock must permit opening of the locked door from the outside, and the opening device must be readily accessible to all caregivers; and Minn. R. 9502.0435, subp. 15, provides that in sinks and tubs accessible to children, water temperature must not exceed 120 degrees Fahrenheit to prevent children from scalding themselves while washing.

⁴³ Ex. 35.

⁴⁴ Ex. 36.

27. Parents of children in the Licensee's care strongly advocate that she be permitted to retain her license. They provided written statements and testimony at hearing that the Licensee is a competent provider who genuinely cares for their children; that she fosters a nurturing, structured, caring, and safe environment; and that their children are stimulated and happy in her care.⁴⁵

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2010).⁴⁶

2. If the commissioner finds that a license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the license holder. When issuing a conditional license, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.⁴⁷

3. If the commissioner finds that a license holder has not corrected the violations specified in the correction order or conditional license, the commissioner may impose a fine and order other licensing sanctions pursuant to section 245A.07.⁴⁸

4. The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules.⁴⁹ When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.⁵⁰

5. Before issuing, denying, suspending, revoking, or making a license conditional the commissioner shall evaluate information gathered under Minn. Stat. § 245A.04 and shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program,

⁴⁵ Ex. 36; Licensee's Ex. 4; Testimony of Jonathan Berger; Testimony of Sue Fogal; Testimony of Sara Hulke.

⁴⁶ All citations to Minnesota Statutes are to the 2010 edition.

⁴⁷ Minn. Stat. § 245A.06, subd. 1.

⁴⁸ *Id.*, subd. 3.

⁴⁹ Minn. Stat. § 245A.07, subd. 3.

⁵⁰ *Id.*, subd. 1.

available consumer evaluations of the program, and information about the qualifications of the personnel employed by the license holder.⁵¹

6. At a hearing regarding a licensing sanction, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.⁵²

7. The Commissioner has demonstrated reasonable cause to revoke the license, and the license holder has failed to demonstrate that she was in full compliance with licensing laws and rules.

8. Based on the nature, chronicity, and severity of the violations, and the potential effect of the violations on persons served by the program, revocation of the license is appropriate.

9. The Memorandum attached hereto is incorporated herein by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the order revoking the family child care license of Janalynn Hartmann.

Dated: February 22, 2012

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

⁵¹ Minn. Stat. § 245A.04, subd. 6.

⁵² Minn. Stat. § 245A.08, subd. 3.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner shall not issue a final decision until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. Parties should contact Lucinda Jessen, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164 (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

MEMORANDUM

The Licensee argues that she worked very hard to implement the supervision plan for her grandson and that the citations issued during the period of conditional licensure are completely unrelated to the issue prompting the order of conditional licensure. Although there were numerous citations, the Licensee contends that she is not hostile to regulation and has not disputed the citations issued to her, because she thought she should do whatever licensors advised her to do, even if she thought they were interpreting a somewhat vague rule in an overly specific manner.

In revoking the license, the Commissioner did not rely on the citations issued prior to the Order of Conditional Licensure, and the list of those violations was received in evidence solely to demonstrate that the Licensee was aware of some of the rules based on previous correction orders. Accordingly, in determining the propriety of revocation, the commissioner must consider the nature, chronicity, or severity of the violations cited in 2011 and the effect of the violation on the health, safety, or rights of persons served by the program.⁵³ In addition, the commissioner is required to consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and

⁵³ *Id.*, subd. 1.

information (if any) about the qualifications of the personnel employed by the license holder.

Although the Licensee did not dispute any of the violations, the record is clear that some citations should not have been issued, and it is appropriate to consider this in evaluating the nature, chronicity, and severity of the violations. The Department may well have determined that plastic “tot locks” on cabinets are not as effective as magnetic locks, but this determination does not arise to the level of an enforceable rule. The adopted rule says only that certain toxic and hazardous materials are to be inaccessible to children in care. The Licensee’s use of those devices on the bathroom cabinet was consistent with the Department’s policy in the past, and there is accordingly no basis to cite her for violating the rule. Similarly, the rule regarding pets is specific as to which pets are permitted and which are not; however, the rule by its terms refers to pets housed “within the residence.” The licenser instructed her that the laundry room was not acceptable and that moving the turtle to an “unlicensed area of the home” was not an option. The Licensee moved the turtle to the garage. This was clearly a good-faith effort to comply with the rule, and she should not have been cited for failing to comply with the correction order requiring removal of the turtle.

Some of the violations were chronic, but not serious. There is no dispute that the Licensee’s practice was to use a gate between the playroom and the stairs to keep children from wandering into unlicensed areas. Licensors required that a second gate be used to block the hallway to the bedroom/furnace room/laundry room area, if those doors were to remain open. This is not an unreasonable requirement, and the Licensee complied with it by purchasing the second gate. She failed to have it in place on one occasion thereafter. Similarly, the requirement to have a gate at the top of the stairs when there are children between the ages of six and eighteen months is reasonable; but the failure to use such a gate when an infant is not yet capable of crawling renders the violation less serious than it otherwise would be. The fact that the second violation occurred while the Licensee was dealing with a flooded basement also mitigates the nature of the violation. The failure to put away items such as screwdrivers, a battery, and a can of deodorant were isolated, but the failure to secure sharp objects in kitchen drawers was a recurrent problem for the Licensee.

Other violations were serious, but not chronic. The failure to comply with SIDS protocol by using a bumper pad and allowing the infant to sleep with a soft cloth, and being over capacity and out of ratio while on a conditional license fall into this category. The citation for lack of supervision in August 2011 had more to do with being overcapacity than with the method the Licensee was using to monitor the children.

The Administrative Law Judge was left with the firm impression that the Licensee is a caring and attentive provider of care to children, but she has not

been attentive to compliance with the many rules governing licensed care. The Licensee did address the supervision issue regarding her grandson, which is the issue that resulted in the conditional license. The Administrative Law Judge does not believe the Licensee is hostile to regulation; the problem is that she continued to operate as she had in the past, with little appreciation for the significance of continued corrective orders while her license was on conditional status. At the same time, some hostility toward the licensor charged with monitoring the conditional license would be justified on this record, because he appears to have been on a mission to cite her with as many violations as possible. Some citations should not have been issued at all, and others were technical violations that had no impact on the safety of any children in care.

Even if the unnecessary and unserious violations are given little weight, however, the fact remains that the Licensee violated SIDS protocol and was rather cavalierly over-capacity when her license was on conditional status and the County had already recommended revocation. In the Administrative Law Judge's view, any other licensee in this situation would likely be facing revocation as opposed to a further period of conditional licensure. As a consequence, the Administrative Law Judge reluctantly concludes that the record supports revocation of the license.

K.D.S.